

Docket: 2006-40(GST)I

BETWEEN:

PAUL GAGALKA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 28, 2006 at Vancouver, British Columbia, conference calls held on October 24, 2006 and February 26, 2007 at Vancouver, British Columbia

Before: The Honourable Justice L.M. Little

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Selena Sit

SUPPLEMENTAL JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act*, for the period January 1, 2001 to December 31, 2003, notice of which is dated March 9, 2005, is allowed, without costs, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Supplemental Reasons for Judgment.

Signed at Vancouver, British Columbia, this 12th day of March 2007.

“L.M. Little”

Little J.

Citation: 2007TCC142
Date: 20070312
Docket: 2006-40(GST)I

BETWEEN:

PAUL GAGALKA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

SUPPLEMENTAL REASONS FOR JUDGMENT

Little J.

A. FACTS

[1] The appeal filed by the Appellant was heard by me in Vancouver, British Columbia. on August 28, 2006. The appeal concerns Goods and Service Tax (“GST”) levied under the *Excise Tax Act* (the “Act”).

[2] At the conclusion of the hearing I delivered my Reasons for Judgment. In my Reasons for Judgment I said:

REASONS FOR JUDGMENT

(Delivered Orally in Vancouver, B.C. on August 28, 2006)

This appeal concerns an audit carried out by officials of the Canada Revenue Agency (“CRA”) relating to the 2001, 2002, 2003 taxation years. When Ms. Kabeya, an auditor with the CRA, reviewed the records of the Appellant, she concluded that there was some possible income not reported for income tax purposes and also for GST purposes. We have heard testimony from the Appellant and his brother that the Appellant has been taking care of his father for a number of years, and especially since November 2001.

The Appellant testified that he would take money from his father's bank account at the Royal Bank, and use this money to pay his father's rent and to pay other expenses.

The Appellant said that his father received approximately one thousand dollars per month, for the years in question, from Old Age Security ("OAS"). The Appellant also testified that in order to buy an automobile, he withdrew \$5,500 from his personal Registered Retirement Savings Plan ("RRSP"). The Appellant said that he paid income tax on the amount withdrawn from the RRSP because it was withheld at source by the Royal Bank.

Having considered the testimony of the Appellant and his brother, and the documents submitted herein, I will allow the appeal on the basis that the Appellant will be required to establish the amounts transferred from his father's bank account to his account at the Vancity Savings Credit Union ("Vancity"). The amounts that the Appellant can establish from the father's account to his own Vancity account will not attract GST. In addition, I will accept the Appellant's testimony about the transfer of the \$5,500 from his RRSP. This amount will not attract GST.

I do not fault Mrs. Kabeya for her efforts, because she testified that she did not receive the documents that she needed to sort out the situation while she was doing the audit. I also must say, in conclusion, that under these circumstances, it is unfortunate that Mr. Gagalka did not have two separate bank accounts, one for personal items and one for business items, because it is very easy to confuse the two and it creates complications.

The appeal will be allowed for the two items that I mentioned. I would also mention that in making the determination of the money transferred from the father's bank account to his Vancity account, Mr. Gagalka must take in mind the fact that Ms. Kabeya did recognize \$2,300 as being applicable in the category I am talking about. Any further amounts that the Appellant can establish will not attract GST.

That is my decision. Thank you very much.

[3] When I heard the appeal Mr. Gagalka stated that he had not been able to obtain his father's bank statements from the Royal Bank of Canada.

[4] By letter dated August 30, 2006 counsel for the Respondent requested that the Court hold a conference call with the parties to establish a deadline for the Appellant to submit to the Respondent an itemized list of those amounts that were transferred from his father's bank account to his own account at Vancity along with supporting documents.

[5] On October 24, 2006 I held a conference call with the Appellant and counsel for the Respondent.

[6] At the conclusion of the conference call I issued the following Order:

The Appellant is directed to obtain the required documents from the Royal Bank of Canada by October 31, 2006 and to submit the documents to counsel for the Respondent no later than November 10, 2006.

The parties are to report to the Court no later than December 1, 2006.

[7] By letter dated November 13, 2006 the Appellant advised the Court that he had supplied counsel for the Respondent at the Department of Justice with a copy of his father's bank account at the Royal Bank of Canada for the 2001, 2002 and 2003 years.

[8] On November 20, 2006 counsel for the Respondent wrote to the Court to advise the Court of the current status of the appeal.

[9] In her letter of November 20, 2006 counsel for the Respondent stated as follows:

The only matter that remains outstanding with respect to the appeal is whether or not the deposits that were made to the Appellant's bank account were deposits from his father's Old Age Security ("OAS") payments and therefore, would not attract GST. The Appellant testified that it was approximately \$1,000.00 a month, or \$12,000.00 per year. [Transcript of Proceedings, page 13, lines 8-23.]

[10] Counsel for the Respondent also said in her letter:

The Respondent submits that the documents provided do not conclusively show which withdrawals from the father's bank account were deposited to the Appellant's bank account.

[11] In her letter Counsel for the Respondent concluded:

In summary, the Respondent submits that the OAS amounts determined to not attract GST, if any, should be no more than \$1,017.21, \$6,015.78 and \$3,700.00 for each of 2001, 2002 and 2003, respectively, calculated as follows:

2001

November 2001

\$500.00

December 2001		500.00
Conceded amount		<u>17.21</u>
		\$1,017.21
<u>2002</u>		
January to December 2002	12 x \$500 =	\$6,000.00
Conceded amount		<u>15.78</u>
		\$6,015.78
<u>2003</u>		
January to December 2003	12 x \$500 =	\$6,000.00
Less: amount already allowed		<u>(2,300.00)</u>
		\$3,700.00
Total		\$10,732.99
RRSP Amount		<u>5,500.00</u>
GRAND TOTAL		\$16,232.99

[12] Counsel for the Respondent also said in her letter:

The Respondent respectfully asks that the parties return to Court before Mr. Justice Little or convene by conference call to speak to the terms of the Order prior to a final order being issued.

[13] On February 26, 2007 I held a conference call with the parties.

[14] At the conclusion of the conference call I stated that I would review the additional information provided by the parties and provide the parties with my comments.

[15] I have now had an opportunity to review all of the relevant documents that have been filed with the Court. In reviewing the statements from the Appellant's father's bank account at the Royal Bank I note that the only deposits in this bank account from January 1, 2001 to December 31, 2003 were payments made by the Government of Canada (the OAS deposits) or monthly payments made to the father by the Province of British Columbia of approximately \$50.00 per month or less (plus a small amount of miscellaneous interest).

[16] I have also noted that every month a cheque in the amount of \$580.00 was drawn by the Appellant from the father's bank account and deposited in the Appellant's account at Vancity. The Appellant's testimony is that the cheque in the

amount of \$580.00 was to cover the rent that he paid for his father. (See transcript of August 28, 2006, page 44, line 3)

[17] There were also a number of miscellaneous cheques drawn on the father's bank account. The Appellant testified that the miscellaneous cheques were drawn by him on his father's bank account and deposited in his Vancity account. The Appellant said that he deposited cheques from his father's bank account to his account on Vancity to pay for his father's food plus other living expenses. (See transcript of August 28, 2006, page 19, lines 17-25 and page 20, lines 1-8)

[18] During the hearing on August 28, 2006 the Appellant called his brother Mr. Voytek Gagalka as a witness. Mr. Voytek Gagalka filed an Affidavit which reads in part as follows:

I, Wojciech (Voytek) Gagalka, MAKE OATH AND SAY THAT: my brother, Paul Jan Gagalka was between years 1990 and 2004 taking care of our now deceased father, Waclaw Gagalka, during which period he was living together with us at 208-2626 St. Johns St., Port Moody, B.C.;

that particularly between the years 2000 and 2004, with our father's full knowledge and verbal consent, my brother solely performed all duties and responsibilities of daily managing of our father's personal finances, which task our father was absolutely incapable to do on his own due of his failing health (suffering heart attacks in 2000) and then, subsequently, suffering a stroke (in November 2001) which caused his (our father's) almost complete aphasia (difficulty or inability to understand and/or communicate), requiring thus substantial effort, dedication and help for him on the part of my brother, Paul Jan Gagalka. (Exhibit A-11)

[19] Mr. Voytek Gagalka said:

So he (i.e. the Appellant) was taking care of his (i.e. our father's) finances, and whatever it was necessary to do. We arranged with our father to -- that we were paying rent at that time. We arranged for that he was loaning money from his (i.e. the father's) account and transferring to his (i.e. the Appellant's) account and the rent was paid. And the same was done with, whatever necessary to support us food, buying food, similar. And it was done this way. (See transcript of August 28, 2006, page 68, lines 6-12)

(Note: Counsel for the Respondent did not ask any questions of Voytek Gagalka following his testimony).

[20] During the conference call that was held by me with the parties on February 26, 2007 the following exchange took place:

JUSTICE: Okay, so the bottom line is that you're telling me the OAS payments came into the Royal Bank account of your father. They went out to pay the rent and to pay other living expenses of your father.

MR. GAGALKA: That's correct.

JUSTICE: And they were transferred to your VanCity account. And that was, as I understand it from your testimony, that was the account that you used both for personal purposes and for business purposes. Is that right?

MR. GAGALKA: That's correct. (transcript of February 26, 2007, page 7, lines 16-25 and page 8, line 1)

[21] At page 10 of the transcript for February 26, 2007 the following exchange took place:

JUSTICE: Well, that's what I've said, I think. I said that it's your position that the CRA was incorrect in charging GST on amounts transferred to your bank account from your father's bank account.

MR. GAGALKA: I agree to that, Your Honour. (lines 11-16)

B. CONCLUSION

[22] After a careful examination of all of the relevant documents that have been filed and the sworn testimony of the parties, I have concluded that the Minister should recognize that all of the cheques that were issued from the Appellant's father's bank account at the Royal Bank of Canada and deposited in the Appellant's account at Vancity, from January 1, 2001 to December 31, 2003, should not be subject to GST.

[23] The Appellant's appeal is allowed.

Signed at Vancouver, British Columbia, this 12th day March 2007.

“L.M. Little”

Little J.

CITATION: 2007TCC142

COURT FILE NO.: 2006-40(GST)I

STYLE OF CAUSE: Paul Gagalka and
Her Majesty the Queen

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: August 28, 2006

DATE OF CONFERENCE CALLS: October 24, 2006, February 26, 2007

SUPPLEMENTAL REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF SUPPLEMENTAL JUDGMENT: March 12, 2007

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Selena Sit

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada